

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 2000-F-15

Date issued: July 19, 2000

Requested by: Nevin Van De Streek, Minot City Attorney
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- QUESTIONS PRESENTED -

I.

Whether a city, including a home rule city, adopting a tobacco control ordinance pursuant to N.D.C.C. § 12.1-31-03(3) may enforce the ordinance against a juvenile in municipal court despite the exclusive original jurisdiction of the juvenile court under N.D.C.C. § 27-20-03.

II.

Whether a juvenile court enforcing a tobacco control ordinance that was adopted pursuant to N.D.C.C. § 12.1-31-03(3) may enforce the civil fee permitted by that statute.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that the exclusive original jurisdiction of the juvenile court under N.D.C.C. § 27-20-03 applies to a city, including a home rule city, adopting a tobacco control ordinance under N.D.C.C. § 12.1-31-03(3).

II.

It is my opinion that the juvenile court does not have authority to order a juvenile to pay the civil fee permitted by N.D.C.C. § 12.1-31-03(3).

- ANALYSES -

I.

N.D.C.C. § 12.1-31-03 generally prohibits providing tobacco to minors and the use of tobacco by minors. The North Dakota Legislature substantially amended N.D.C.C. § 12.1-31-03 during the 1999

Legislative Session. 1999 N.D. Sess. Laws ch. 130. Among the changes made, a city or county may now adopt an ordinance or resolution to prohibit any person from selling or furnishing tobacco to a minor and to prohibit a minor from purchasing, possessing, or using tobacco. N.D.C.C. § 12.1-31-03(3). This new legislation also permits a city or county to provide that a violation would not be criminal and would be subject to a fee. Id. Further, any individual cited for such a violation may "appear before a court of competent jurisdiction" to pay the fee. N.D.C.C. § 12.1-31-03(3)(a).

Ordinarily, a violation of a municipal ordinance would be heard before a municipal judge. N.D.C.C. § 40-18-01. However, the juvenile court has "exclusive original jurisdiction" of any proceeding in which a child is alleged to be delinquent, unruly, or deprived. N.D.C.C. § 27-20-03(1)(a). The jurisdiction of the juvenile court depends not only upon the status of the defendant as a minor, but also upon the characterization of the actions, behavior, or circumstances of the minor as being delinquent, unruly, or deprived.

A delinquent child is a child who has committed a delinquent act and is in need of treatment or rehabilitation. N.D.C.C. § 27-20-02(7). A delinquent act is an act designated a crime under the law, including local ordinances or resolutions, but which is not an offense applicable only to a child or a traffic offense. N.D.C.C. § 27-20-02(6).¹ An unruly child, in relation to these offenses, is a child who has committed an offense applicable only to a child or who is willfully in a situation dangerous or injurious to the health, safety, or morals of that child or others, and in either instance is in need of treatment or rehabilitation. N.D.C.C. § 27-20-02(17). The definition of a deprived child, and the status of the child in relation to the juvenile court because of meeting that definition, does not appear to be directly relevant to N.D.C.C. § 12.1-31-03. See N.D.C.C. § 27-20-02(8).

Under subsection 3 of N.D.C.C. § 12.1-31-03, a city or county may make a violation of subsections 1 or 2 a "noncriminal violation." Under N.D.C.C. § 12.1-31-03(1), it is a criminal infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco. Under N.D.C.C. § 12.1-31-03(2), it is a criminal infraction for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco. A city or county may not supercede a state criminal offense. N.D.C.C. § 12.1-01-05. Therefore, the offense must be defined

¹ Internal references in subsection 6 of N.D.C.C. § 27-20-02 appear to be incorrect. The reference to subdivision c of subsection 16 should be to subdivision c of subsection 17 and the reference to subsection 15 should be to subsection 16.

identically to the state violations at N.D.C.C. § 12.1-31-03(1) and (2).

When determining the jurisdiction of the juvenile court, both the age of the person charged and the actions which are being charged must be examined. The subsection 1 offense, selling or furnishing tobacco to a minor, may be committed either by an adult or by a minor. The subsection 2 offense of possessing, purchasing, or using tobacco only applies to a minor. If a city has adopted a municipal ordinance corresponding to a subsection 1 violation and the person to be charged with the offense is an adult, the municipal court would have jurisdiction over the matter pursuant to N.D.C.C. § 40-18-01. However, if a municipal ordinance corresponding to a subsection 1 offense is charged against a minor or if a minor is charged with a municipal ordinance corresponding to a subsection 2 offense, then the issue must be examined whether the new language adopted into law at N.D.C.C. § 12.1-31-03(3) was intended to create jurisdiction over juveniles for this offense in municipal court or whether jurisdiction was to be retained in the juvenile court.

A subsection 2 offense for a minor who purchases, possesses, smokes or uses tobacco is an offense applicable only to a child. N.D.C.C. § 12.1-31-03(2). The child then meets the definition of an unruly child for purposes of juvenile court jurisdiction. N.D.C.C. § 27-20-02(10)(c). Therefore, a minor charged with a local offense corresponding to N.D.C.C. § 12.1-31-03(2) will be subject to the exclusive jurisdiction of the juvenile court.

However, when a minor is charged with a noncriminal violation of a local ordinance concerning the subsection 1 offense of selling or furnishing tobacco or tobacco products to another minor, the interrelation between N.D.C.C. § 12.1-31-03 and the Uniform Juvenile Court Act becomes ambiguous if each is given a limited textual reading. A statute is ambiguous if it is susceptible to differing but rational meanings. Callhoff v. N.D. Workers Comp. Bureau, 484 N.W.2d 510, 512 (N.D. 1992). Statutes that are clear and unambiguous may contain a latent ambiguity when applied to a particular situation. Kroh v. American Family Ins., 487 N.W.2d 306, 308 (N.D. 1992). A minor violating a municipal ordinance by selling or furnishing tobacco to another minor has not committed an offense applicable only to a child. An adult may commit the same offense. Further, it is not a delinquent act because a delinquent act is an act designated a crime and the municipal ordinance is a noncriminal violation. These observations are tempered by the fact that the acts charged are still crimes under state law, and remain a criminal violation of state law even though the noncriminal municipal ordinance is being charged. Further, one of the definitions of an unruly child is a child who is willfully in a situation injurious to the health, safety, or morals of

that child or others, which could be applied to the illegal sale or furnishing of tobacco to other minors. There is a latent ambiguity in the relationship between the Uniform Juvenile Court Act and N.D.C.C. § 12.1-31-03(3) concerning the furnishing of tobacco to a minor.

The intent of the Legislature must be ascertained when construing statutory provisions. Republican Comm. v. Democrat Comm., 466 N.W.2d 820, 824 (N.D. 1991). "If the language of a statute is ambiguous or of doubtful meaning, extrinsic aids may be used to interpret the statute." Kim-Go v. J.P. Furlong Enters., Inc., 460 N.W.2d 694, 696 (N.D. 1990). Extrinsic aids which may be used in determining the intention of the Legislature when a statute is ambiguous include consideration of the objects sought to be obtained, the circumstances under which the statute was enacted and its legislative history, and the consequences of a particular construction. N.D.C.C. § 1-02-39. Further, when enacting a statute, it is presumed that the Legislature intended compliance with the constitutions of the state and the United States, that the entire statute is to be effective, that a just and reasonable result should be obtained, that this result is feasible of execution, and that the public interest is favored over private interests. N.D.C.C. § 1-02-38.

There are several fundamentally important differences between a proceeding in a juvenile court and a proceeding in a municipal court. The juvenile court law was not intended to provide for punishment of minors, but instead was intended to treat the minors as wards of the state. State v. Gronna, 59 N.W.2d 514, 534 (N.D. 1953). Although Gronna interpreted prior law, its basic principles for treatment of juveniles were followed in enactment of the Uniform Juvenile Court Act, N.D.C.C. ch. 27-20. The Uniform Juvenile Court Act is comprehensive and all parts of the Act must be construed together as a whole. In Interest of B.L., 301 N.W.2d 387, 390 (N.D. 1981). One of the rights afforded to a juvenile by the Uniform Juvenile Court Act is confidentiality. All files and records of the juvenile court are confidential and may not be disclosed to the public. N.D.C.C. § 27-20-51. Also, hearings are to be conducted in a confidential manner and the general public must be excluded from any hearings. N.D.C.C. § 27-20-24(5). Further, the juvenile is not treated as having a criminal record. The disposition of the child and any evidence adduced in a hearing in juvenile court may not be used against the child, except in very limited circumstances. N.D.C.C. § 27-20-33(2). These differences have been considered significant for equal protection purposes in cases reviewing juvenile court jurisdiction. Lamb v. Brown, 456 F.2d 18 (10th Cir. 1972); Long v. Robinson, 316 F.Supp. 22 (D. Md. 1970), aff'd, 436 F.2d 1116 (4th Cir. 1971).

Therefore, a construction of N.D.C.C. § 12.1-31-03(3) which permitted juveniles to be prosecuted in municipal court for the same violation that a juvenile prosecuted under state law would be prosecuted in juvenile court may violate equal protection rights. This office has previously examined the question of juvenile court jurisdiction over a municipal offense which is worded identically to a criminal offense under state law. 1987 N.D. Op. Att'y Gen. 105 (Dec. 1 to Robert Manly).

[Separate jurisdiction in juvenile court and municipal court over minors for violations of state law and identical municipal ordinances] would result in a determination of court jurisdiction over an open bottle violation within a city as dependent not upon a legislative act but upon a decision of the charging agency or person as to whether the child would be cited for the open bottle violation under state law or municipal ordinance. This charging decision could subject children who are similarly situated to differing dispositions, proceedings, and benefits which may otherwise be authorized by state law or to abusive or discriminatory enforcement of the open bottle provisions.

1987 N.D. Op. Att'y Gen. at 106-107. (Emphasis added).

Statutes are construed to avoid constitutional conflict if possible. McCabe v. North Dakota Workers Comp. Bureau, 567 N.W.2d 201, 204 (N.D. 1997). "If a statute may be construed in two ways, one that renders it of doubtful constitutionality and one that does not, we adopt the construction that avoids constitutional conflict." Ash v. Traynor, 579 N.W.2d 180, 182 (N.D. 1998). Interpreting N.D.C.C. § 12.1-31-03(3) as requiring juveniles charged to be under the jurisdiction of the juvenile court, as would be the case with a state law charged under subsections 1 and 2, would avoid a conflict with the juvenile's right to equal protection.

The legislative history reveals that a conference committee took up the language presently codified at N.D.C.C. § 12.1-31-03(3) and considered that a juvenile charged with a municipal ordinance or county resolution consistent with that statute would still be heard in juvenile court. The minutes of the committee contain the following exchange.

SENATOR WATNE asked what court would hear these violations.

ROSIE [sic] SAND [General Counsel of the Office of Attorney General] answered the question that the juvenile court would hear this in the case of juveniles.

SENATOR STENEHJEM stated he thinks it should go into juvenile court because they get more services and they do a follow up.

REPRESENTATIVE HAWKEN stated that the law enforcement officer who cites a minor for the violation shall mail a notice to the parents.

SENATOR STENEHJEM stated that the juvenile court will notify the parents. We can amend this to say "law enforcement or the juvenile court."

Hearing on S.B. 2125 Before Conference Committee, 1999 N.D. Leg. (April 1) (committee minutes). The Supreme Court has held that the statements of individual legislators may be given effect if they are consistent with statutory language and other legislative history, which justifies reliance on them as evidence of legislative intent. Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993), quoting 2A Norman J. Singer, Sutherland on Statutes and Statutory Construction Section 48.13 (5th ed. 1992 revision). This legislative history demonstrates that the conference committee directly considered the question of jurisdiction and that the committee members understood that the juvenile court would have jurisdiction over all juveniles charged under a municipal ordinance or a county resolution adopted pursuant to N.D.C.C. § 12.1-31-03(3). This intent is further evidenced by the amendment to N.D.C.C. § 12.1-31-06(4) to require juvenile court involvement.

It may be argued that the noncriminal violation and fee, as found at N.D.C.C. § 12.1-31-03(3), is inconsistent with the remedies available to the juvenile court and therefore may indicate legislative intent to take jurisdiction away from juvenile court. This is not a strong argument because the state law violations provide for a criminal punishment which also is inconsistent with the remedies available under the juvenile court act. As noted previously, the purpose of the juvenile court is to remove the taint of criminality from juveniles within the scope of the act, and essentially to provide immunity from prosecution for crime. Gronna, 59 N.W.2d at 538. Therefore, even though a particular punishment is specified in statute, that punishment does not define the jurisdiction of the juvenile court.

Instead, exceptions to the Uniform Juvenile Court Act's jurisdiction have been found based on language of the Uniform Juvenile Court Act itself. In Interest of B.L., 301 N.W.2d at 390-91. The bill enacting the new language found in N.D.C.C. § 12.1-31-03(3) did not amend the Uniform Juvenile Court Act. 1999 N.D. Sess. Laws ch. 130. This implies that the Legislature did not intend to remove these violations from juvenile court jurisdiction.

Therefore, it is my opinion that the exclusive original jurisdiction of the juvenile court under N.D.C.C. § 27-20-03 applies to a tobacco control ordinance adopted by a city under N.D.C.C. § 12.1-31-03(3).

A city's home rule authority does not provide a basis to overturn the jurisdiction of the juvenile court. Among the home rule powers a city may exercise is the power to "provide for city courts, their jurisdiction and powers over ordinance violations." N.D.C.C. § 40-05.1-06(5). This authority does not imply that a city may take jurisdiction away from state or federal courts and give that jurisdiction to the municipal court. The extent and scope of a city's home rule power must be construed strictly and may not be exercised in a manner which conflicts with general laws which deal with matters of statewide concern. 1993 N.D. Op. Att'y Gen. 96, 101-102 (Dec. 22 to Frank Wald) (abolition of municipal court). See also Meyer v. City of Dickinson, 451 N.W.2d 113, 115-16 (N.D. 1990); 6 McQuillin, Municipal Corporations § 21.30 (1988). Home rule authority only extends to "local and city" matters. N.D.C.C. § 40-05.1-06. A city's implementation of home rule may not "supercede or prevail over conflicting general law dealing with affairs purely of statewide concern even though [the matter implemented] may pertain to municipal corporations." 6 McQuillin, Municipal Corporations § 21.30 (1988). The juvenile court serves statewide functions by which the state is exercising its sovereign authority in equity to treat certain children as wards of the state who are in need of reform and guidance. Gronna, 59 N.W.2d at 539-40. The jurisdiction of the juvenile court is a matter of statewide concern and state sovereignty and is not a matter of local concern which a city may provide for under its home rule authority.

Therefore, it is my further opinion that a home rule city does not have authority to take jurisdiction from the juvenile court when addressing an ordinance adopted under N.D.C.C. § 12.1-31-03(3).

II.

The disposition of delinquent or unruly children by a juvenile court is provided in N.D.C.C. §§ 27-20-31 through 27-20-32. The Uniform Juvenile Court Act limits the imposition of monetary penalties² to

² Where a fine is part of a punishment "it is immaterial whether it is called a penalty or a civil judgment." State v. Bickford, 147 N.W. 407, 424 (N.D.1913). Amounts charged as punishment are criminal fines and amounts charged as restitution or to recover for possible damages are civil. State ex rel. Backes v. A Motor Vehicle, 492 N.W.2d 595, 598 (N.D.1992). See also Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767, 779-80, 114 S.Ct. 1937, 1946 (1994) (punitive

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finest for specific offenses. N.D.C.C. §§ 27-20-31(3); see also N.D.C.C. §§ 27-20-02(16). Tobacco related offenses, either state or local, under N.D.C.C. § 12.1-31-03 are not listed. This implies that a juvenile court may not issue a fine or fee for tobacco related offenses, including a city ordinance adopted under N.D.C.C. § 12.1-31-03(3).

However, N.D.C.C. § 12.1-31-03(3) permits cities and counties to impose a statutory fee for tobacco related violations and provides for a hearing before "a court of competent jurisdiction." Arguably, this implies that the juvenile court, as the court of competent jurisdiction over juveniles, would be able to impose a civil fee for violations of a city tobacco ordinance. This is another instance where more than one conclusion rationally may be drawn from N.D.C.C. § 12.1-31-03(3), making this statute ambiguous. Callhoff, 484 N.W.2d at 512.

An argument that the reference to "a court of competent jurisdiction" in N.D.C.C. § 12.1-31-03(3) means that the juvenile court may impose the civil fee specified in that statute when the juvenile court has jurisdiction is not meritorious for two reasons. First, had the Legislature intended to add tobacco related offenses to the offenses for which the juvenile court could impose a monetary penalty under N.D.C.C. §§ 27-20-31(3), it would have done so by amending that section or otherwise specifically mentioning the juvenile court. The fact that it did not amend the Uniform Juvenile Court Act to include imposition of monetary penalties for violation of N.D.C.C. § 12.1-31-03(3) offenses indicates that the Legislature intended not to alter the dispositions available to the juvenile court for children charged with such an offense. In Interest of B.L., 301 N.W.2d at 390-91.

Second, the reference to "a court of competent jurisdiction" in N.D.C.C. § 12.1-31-03(3) may be given meaning without reference to the juvenile court. The use of the phrase "a court of competent jurisdiction" denotes the fact that an adult offender may have a hearing in two different courts depending upon the circumstances. An adult would have a hearing for violation of a city ordinance in municipal court for those cities having a municipal court. N.D.C.C. § 40-18-01. However, an adult would have a hearing in district court for violations of a county resolution or violations of a municipal ordinance in those cities that do not have a municipal court. North Dakota Constitution, art. VI, § 8, N.D.C.C. § 27-05-06. See also N.D.C.C. § 40-18-06.2.

sanctions distinguished from taxes). There is no indication that the civil fee for tobacco related offenses is intended as restitution for governmental damages or as a revenue raising tax.

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Therefore, it is my opinion that the juvenile court does not have authority to order a juvenile to pay the civil fee permitted by N.D.C.C. § 12.1-31-03(3).

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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